



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172190

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on March 23, 2016, at Ashland, Wisconsin.

The issue for determination is whether the county agency may intercept the petitioner's federal income tax refund to recover an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The county agency notified the petitioner on July 28, 2014, that it would seek to recover an \$8,560 overpayment of FoodShare that allegedly occurred from April 1, 2013, through May 31,

2014. The notice informed the petitioner that any appeal of the overpayment finding must be filed within 90 days. The petitioner did not appeal the finding.

3. The Department recovered \$658 from the petitioner's ongoing FoodShare benefits from April 2013 through November 2015. The petitioner's case closed on November 30, 2015.
4. The county agency notified the petitioner on December 2, 2015 that he had until December 25, 2015, to sign a repayment agreement. He has not done so. Nor has he made any more payments on the FoodShare debt.
5. The Department notified the petitioner on February 12, 2016, that it intended to intercept his federal income tax refund to recover the \$7,902 remaining on the debt.

DISCUSSION

State FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). Those responsible for paying an overpayment include "[e]ach person who was an adult member of the household when the overpayment...occurred. 7 CFR § 273.18(a)(4)(i). The department may recover an overpayment by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85.

The county agency notified the petitioner on July 28, 2014, that it intended to recover an \$8,560 overpayment of FoodShare that allegedly occurred from April 1, 2013, through May 31, 2014. The notice informed him that he had 90 days to appeal that decision as allowed under Wis. Admin. Code § HA 3.05(3). He never appealed, and the Department began recovering the overpayment from his regular FoodShare benefits. His case closed on November 30, 2015, so his payments against the overpayment ended. On December 2, 2015, the county agency notified him that he had until December 25, 2015, to sign a repayment agreement. He has not done so. Nor has he made any more payments on the FoodShare debt. The Department now seeks to intercept his income tax refund to begin recovering the \$7,902 remaining FoodShare debt.

The petitioner's wife contends, "We shouldn't owe nobody anything for nothing." But she and the petitioner already had a chance to challenge the underlying overpayment and did not do so. Although they have the right to challenge the department's decision to intercept their taxes, an administrative law judge "may limit the scope of the hearing to exclude issues...that could have been presented at a prior opportunity for hearing." Wis. Stat. § 49.85(4)(b). The petitioner was aware of the opportunity to challenge the overpayment because the agency told him about it two years ago. Moreover, he never objected the agency's decision to reduce his benefits to recover that overpayment. Therefore, he cannot challenge the overpayment now. Because the request to intercept his tax refund meets all legal requirements, the Department may take this action.

CONCLUSIONS OF LAW

1. The petitioner is not entitled to challenge the underlying overpayment of FoodShare because he had a prior opportunity to do so and did not.
2. The Department may intercept the petitioner's income tax refund to recover an overpayment of FoodShare.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 31st day of March, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 31, 2016.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit